

# **EXHIBIT 39**

## Even as Many Eyes Watch, Brutality at Rikers Island Persists (Published 2015)

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Inmate Jose Guadalupe at the Fishkill Correctional Facility in Beacon, N.Y. Mr. Guadalupe has sued the Correction Department over injuries he says he suffered at the hands of Rikers Island jail guards. Credit... Richard Perry/The New York Times

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On Sept. 2, four correction officers pulled Jose Guadalupe, an inmate classified in medical records as seriously mentally ill, into his solitary-confinement cell at Rikers Island and beat him unconscious.

A little over two months later, three guards wrestled another inmate, Tracy Johnson, to the floor, pepper-sprayed him in the face and broke a bone in his eye socket. Then, on Dec. 9, yet another group of officers beat Ambiorix Celedonio, an inmate with an I.Q. of 65, so badly that, as surveillance footage later showed, he had bruises and scratches on his face and blood coming from his mouth.

The brutal confrontations were among 62 cases identified by The New York Times in which inmates were seriously injured by correction officers between last August and January, a period when city and federal officials had become increasingly focused on reining in violence at Rikers.

It was in August that the United States attorney's office in Manhattan issued a [damning report](#) about brutality at the jail complex and threatened to sue the city unless conditions there improved. And in November, [Mayor Bill de Blasio declared](#) that ending pervasive violence at Rikers had become a top priority for his administration.

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But The Times's examination makes clear that the violence has continued largely unabated, despite extraordinary levels of outside scrutiny, a substantial commitment of resources by Mr. de Blasio and a new team of high-ranking managers installed by the correction commissioner, Joseph Ponte, who took over the job in April.

According to Correction Department data, guards used physical force against inmates 4,074 times in 2014, the highest total in more than a decade. The increase came even as the jail's average daily population continued to decline, falling to 10,000 this year from 14,000 a decade ago.

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Seventy percent of the 62 beatings examined by The Times resulted in head injuries, even though department policies direct guards to avoid blows to the head unless absolutely necessary. And more than half the inmates sustained broken bones.

In October, a typical month, one inmate had his jaw shattered by a guard after being handcuffed and led into an elevator; another had his arm broken while handcuffed; and a third had three teeth knocked out.

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The Times also identified 30 episodes from August to January in which officers suffered serious injuries in altercations with inmates. While most of the inmates involved sustained head injuries, nearly half the guards fractured bones in their hands and fingers, often after striking inmates in the head.



The Rikers Island jail complex, where the use of force by officers against inmates continues to result in serious injuries. Credit... Damon Winter/The New York Times

The findings were based on a review of hundreds of pages of Correction Department reports detailing the most serious uses of physical force by correction officers, city records describing inmate injuries, internal city investigative documents and inmate medical records. Taken together, they suggest that in the face of an unprecedented push to reform Rikers, guards are either being defiant or are indifferent to demands for change.

Correction Department officials said the scheduled opening this week of a new unit to house 250 of the jail's most disruptive inmates should help reduce violence. The inmates will be locked in their cells 17 hours a day, instead of the usual 10, and extra officers will be assigned to the unit.

"It takes time to undo decades of mismanagement," the department said in a statement. "We are, however, on our way to a jail system that is safer and more humane."

Brutality by guards has long been a problem at Rikers. In July, The Times published an [investigation](#) that documented the cases of 129 inmates who had been seriously injured in encounters with guards over an 11-month period in 2013. Within three weeks, Preet Bharara, the United States attorney for the Southern District of New York, released his report, which described a "deep-seated culture of violence" at the complex. And several months after that, Mr. Bharara [decided to sue](#) the city over conditions at Rikers, joining a class-action lawsuit brought by the Legal Aid Society.

It was on Nov. 20 that Mr. de Blasio convened an unusual hourlong news conference devoted almost exclusively to Rikers. He said ending the violence there was a "moral obligation" and announced that he had set aside tens of millions of dollars for improvements.

But in trying to turn around Rikers, the de Blasio administration is contending with an agency that for years, according to the city's Investigation Department, recruited officers who belonged to gangs, had criminal records or both. Training has long been criticized as inadequate and, once on the job, guards have learned to look the other way and cover up for fellow officers, investigators say.

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Ultimately, the biggest challenge may be altering the mind-set of the 9,000 correction officers who work on the island.

"Changing the culture of violence on Rikers Island will not be easy or quick," said Dr. Robert Cohen, a member of the Board of Correction, the city agency that serves as a watchdog over the jails. "It will not occur without constant external pressure, and consistent leadership within the Department of Correction. The demonization of detainees is embedded in everyday practice."

### Cover-Ups and Willful Neglect

Mr. Guadalupe's altercation with correction officers started innocuously, with a disagreement over personal photos he had hung on the wall of his cell.

During a search in September, the guards tore down photos of his family, along with pictures of women he had cut out of magazines, he said in a telephone interview from Fishkill Correctional Facility. When he asked to see a supervisor, Mr. Guadalupe said, the officers pulled him into his cell, where there were no surveillance cameras, kicked and repeatedly punched him in the face and slammed his head against the wall.

Later, at Bellevue Hospital Center, he was found to have suffered a concussion, according to his medical records. He was subsequently sent back to Rikers, where he spent the next three weeks in a wheelchair.

Jail clinicians labeled Mr. Guadalupe as "S.M.I." or seriously mentally ill, in medical records, though the documents do not make clear the precise diagnosis. They do indicate that he had "mild mental retardation."

correction officers tore down and crumpled the pictures he had on the wall of his cell. Mr. Guadalupe asked to speak with a captain about this. In response to this request, four DOC correction officers dragged Mr. Guadalupe into his cell, threw him onto the floor, and savagely punched him multiple times in the head and kicked him multiple times in the back, legs, and ribs. During this entire assault, Mr. Guadalupe was handcuffed, lying face down on the floor. For six hours after the assault, Mr. Guadalupe was left in a hot intake cell without medical attention, as he went in and out of consciousness. As a result of this brutal beating, Mr. Guadalupe lost consciousness and sustained a concussion; a laceration to his face that required stitches; swelling to his jaw, temple, and ear; bruised ribs; and severe lower back pain. He was also diagnosed

An excerpt from Mr. Guadalupe's lawsuit.

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His case typifies the Correction Department's struggle in dealing with inmates who have mental illnesses, a group that now accounts for nearly 40 percent of the jail population. It is these inmates — particularly ill suited to the jail's regimen — who tend to behave the most erratically, bringing out some of the worst abuses by guards.

Mr. Guadalupe, 23, dropped out of school in ninth grade and said he had never held a job. He has spent five of the last six years incarcerated, most recently for using a BB gun to rob a man and then trying to get away on a bicycle.

After being beaten at Rikers, he told a social worker he was scared about returning to his cell, according to a transcription of the conversation entered into a daily progress note.

"I am worried I am going to get sent back to the building that I came from and that I am going to have to deal with the same officers," he told the social worker.

"I don't get along with some officers because they act like they are better," he added. "I have always been this way."

Department protocol allows officers to use force when facing an immediate threat, but only as much as is necessary to defuse the situation. In several of the encounters examined, guards continued to use force long after an inmate had been handcuffed.

That was the case with Pernell Griffin, a member of the Bloods gang who is being held awaiting trial on an attempted murder charge. He is a contentious and sometimes violent inmate. On Oct. 28, he smashed a television and intentionally knocked over a cup of water on an officer's desk, said his lawyer, Jason Leventhal.

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According to a Correction Department report, three officers in helmets and body armor led Mr. Griffin into an elevator, where he head-butted and then kicked one of them in the groin. In Mr. Griffin's version, the

officers were the aggressors, handcuffing him first and then repeatedly punching him in the face while he was in the elevator.

What is clear from medical records is that his jaw was shattered so badly that it required two surgeries to repair. In the second, according to the records, surgeons spent nine hours transplanting bone from his hip to his jaw.

Two days after the surgery, he was put into a solitary-confinement cell.

The same week that Mr. Griffin was beaten, seven guards subdued and handcuffed Rauf Yearde, pulling his cuffed hands so far behind his back that his left upper arm snapped.



Correction officers took an oath at the department's promotion and recruit graduation ceremony on Feb. 13. Credit... Nicole Bengiveno/The New York Times

One of the federal report's key findings was that cover-ups by guards and other jail staff members were commonplace. Cases from recent months suggest that continues to be true.

In December, after Mr. Celedonio was beaten, a Correction Department report compiled by officers said that the altercation had begun when he punched a captain, Medzid Kolenovic, in the face.

City investigators came to a different conclusion, based in part on their review of surveillance video. They called the officers' version "false," and noted that Mr. Celedonio "did not react with violence, but walked away from the captain," according to investigative records.

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The deaths of Jerome Murdough and Bradley Ballard, which attracted widespread attention last year after the details [were reported](#) by The Associated Press, cast a spotlight on a different issue at Rikers: willful neglect of inmates by guards. Both men had schizophrenia. Mr. Murdough died when the temperature in his cell rose above 100 degrees; Mr. Ballard was discovered in his cell naked and covered with vomit and feces, after being denied food and medicine for nearly a week.

In the aftermath, city officials said that such behavior would no longer be tolerated. Yet several recent incidents suggest that even inmates in the most desperate circumstances are still being ignored.

One such inmate, Victor Woods, died on Oct. 1 from abdominal bleeding as a guard stood over him drinking a cup of coffee. According to an investigative report, it was other inmates who stepped in to help, "comforting him, cleaning his face and helping him to an upright position." The report quoted the guard, Wickenson DeMaitre, as saying, "I am not touching him." The report also noted that guards were slow to notify medical staff, who took 11 minutes to arrive.

Just days before, an administrative judge had recommended that Mr. DeMaitre, a 13-year veteran of the department, be fired over a pair of previous arrests. In December 2009, he had been charged with having an inappropriate relationship with a 15-year-old relative and sending her a photo of a penis. (The teenager later recanted, but the administrative judge felt the allegations were credible.) And in April 2010, Mr. DeMaitre had a restraining order issued against him after he pleaded guilty to disorderly conduct for ramming the car of a man

who had been on a date with his estranged wife. The administrative judge wrote in his Sept. 29 ruling that Mr. DeMaitre displayed “a disturbing lack of judgment and self-control” and his conduct “raised doubts about his suitability to be a correction officer.”

A department spokesman said Mr. Woods’s death was being investigated but that Mr. DeMaitre had been dismissed, based on the judge’s ruling.

In a brief phone interview, Mr. DeMaitre said only that he had been “railroaded.”

### **System Allows Repeat Abuses**

Mr. de Blasio has acknowledged that when he came into office he underestimated how dysfunctional the Rikers Island complex had become and how much effort would be required to fix it.

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Rikers is made up of 10 jails, many in dire need of physical repairs. Compulsory overtime for the officers who staff them is now routine. They complain that repeated 16-hour shifts leave them exhausted, on edge and with little patience for disruptive inmates.

For now, the city is concentrating most heavily on turning around a single jail, the one that houses the island’s youngest inmates.



Joseph Ponte, the correction commissioner, left, spoke with Mayor Bill de Blasio during the department's promotion and recruit graduation ceremony on Feb. 13. Both men have pledged to reduce violence at the Rikers Island complex. Credit...

Nicole Bengiveno/The New York Times

Since federal authorities threatened to intervene in August, the city has created several new programs at that jail, increased the size of the correctional and clinical staffs there and provided specialized training for the guards who work with teenagers.

In December, the department ended the use of [solitary confinement for 16- and 17-year-olds](#). For the first time, they all attend the jailhouse school.

The department has also installed security cameras under stairways and in hallways where beatings had long gone out of sight.

Mr. Ponte said he hoped the jail would serve as a model for reforming the rest of Rikers. But the results so far make clear that it will not be easy. Despite all the new initiatives, use of force by guards against the youngest inmates spiked in December.

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Among the most pressing needs is remaking the department's disciplinary system, which seems incapable of holding violent guards accountable.

In December, during a meeting of correction officials, Mr. Ponte complained that he had only recently been able to sign off on disciplinary action against a captain who had left the department two years earlier, according to a city official who was briefed on the meeting. Mr. Ponte also expressed concern that the process was badly backlogged because of understaffing and low salaries in the department's trials and investigations divisions.

One of the cases discussed at the meeting involved Officer Ramel Small. In June, Mr. Small had begun arguing with an inmate named Tamel Brantley, then punched him in the face with a set of keys in his hand, an investigative report said. Mr. Brantley's eye socket and nose were broken, and he was kept handcuffed on the floor for over an hour without medical attention, the report said. Six months after the episode, Mr. Small still had not been interviewed by department investigators.

With a disciplinary system that is so feeble, there are officers who have been allowed to abuse inmates again and again, another issue highlighted in the United States attorney's report.

One guard, Bob Villette, who joined the department in 2006, has been involved in at least 88 uses of force, according to department records. He has also been named in seven lawsuits, costing the city \$450,000 in settlements for, among other things, cracking the teeth of one inmate and rupturing the eardrum of another.

Mr. Villette, who declined to comment when reached by phone, is a member of the elite emergency services unit, which specializes in subduing disruptive inmates. Including overtime, he has made over \$100,000 annually in recent years, city personnel records show.

In December, he got into a struggle with Leon Barnes, an inmate whose arm was in a sling at the time. According to a department report, Mr. Villette wrestled the inmate to the floor, where five other officers “applied control holds” and handcuffed him.

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During the encounter Mr. Barnes suffered a contusion to the scalp, a swollen jaw and a broken nose, the report said.

The six officers reported no injuries.

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